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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 002374

SIPDIS

STATE FOR NP/ECC KATHY CROUCH
ENERGY FOR SLD
USCS/INA FOR DHARRELL
ROME FOR CUSTOMS ATTACHE

E.O. 12958: DECL: 04/10/2013
TAGS: PARM ETTC PREL KSTC TU
SUBJECT: EXBS: TURKS REJECT AGREEMENT ARTICLES; PROPOSE
CASE-BY-CASE WORK

REF: A. STATE 29502
1B. 02 ANKARA 7670
1C. 02 STATE 165781

(U) Classified by Deputy Chief of Mission Robert Deutsch.
Reasons 1.5 (b) and (d).

¶1. (U) This is an action request. Please see para 7.

¶2. (C) Summary. On March 31, the Turks objected to three articles of our proposed Export Control and Related Border Security Assistance (EXBS) Program agreement. The articles govern the status of personnel, claims, and inspections and audits. For the moment, we are at an impasse, and it appears as though these three articles serve as a proxy for the GOT's overall reluctance to conclude the agreement. Turkey remains eager to cooperation regarding non-proliferation, but would like to work with us on a project-by-project basis, without an overarching framework or agreement. End Summary.

¶3. (C) On March 31, MFA Disarmament Department Head Ibrahim Yagli convoked Polmiloff to respond to the US's proposed text for an agreement "Regarding Cooperation to Facilitate the Provision of Assistance for Non-Proliferation Purposes." We had presented our latest text to the Turks on September 30, 2002. Polmiloff had subsequently lobbied Turkish Customs and MFA on multiple occasions to dislodge a response. Yagli said that the GOT had examined our text in detail and had concluded that articles III, IV, and V "were not in conformity with Turkish legislation." Therefore, the GOT could not accept our text as it stands, absent action by the Turkish Parliament. Yagli did not hold out parliamentary action as an option.

¶4. (C) Yagli urged us to put an overarching agreement to the side. He said the GOT "on the whole attaches importance to cooperation on non-proliferation issues." However, he proposed that the US and Turkey "continue cooperating with purpose-oriented projects, but without a big, extensive agreement." He thought that the US seemed to be trying to use a generic text, perhaps appropriate for other circumstances, but for which Turkey did not see a need. As Yagli put it, Turkey is "ready to receive proposals on what and how we can move forward."

¶5. (C) Polmiloff asked Yagli if we could get a detailed analysis of the legal obstacles to Turkey's accepting the three articles. Yagli replied that he would have to refer to MFA's Legal Department to get specific information. Noting the MFA's understanding is that the US position on the articles is "steady," he had not thought that we would want the particulars of why the article were objectionable. Yagli recalled that in June 2002 Turkey had objected to these specific provisions, but in September the US's counter-proposal contained basically the "same articles." Polmiloff pressed Yagli on whether, hypothetically, modifications of the September text might make the agreement acceptable to Turkey, but Yagli could not commit on whether Turkey's reservations regarding the agreement, as opposed to the articles, were firm.

¶6. (U) The three articles to which the Turks object are as follow:

Begin Text:

Article III: Status of Personnel

(a) Turkey shall accord civilian and military personnel of the United States Government present in Turkey in connection with United States assistance programs under this Agreement, status equivalent to that accorded administrative and technical personnel under the Vienna Convention on Diplomatic Relations of April 18, 1961.

(b) Nothing in this Agreement shall be construed to derogate from the privileges and immunities granted to any personnel under other agreements.

Article IV: Claims

(a) Turkey shall, in respect of legal proceedings and claims, other than contractual claims, hold harmless and bring no legal proceedings against the United States and personnel, contractors, and contractors' personnel of the United States for damage to property owned by Turkey, or death or injury to any personnel in Turkey, arising out of activities pursuant to this Agreement.

(b) Claims by third parties, arising out of the acts or omissions of any employees of the United States or contractors or contractors' personnel of the United States done in the performance of official duty, shall be the responsibility of Turkey.

Article V: Inspection and Audit

Upon reasonable request, Turkey, or its relevant authorities or entities subject to its jurisdiction, shall permit representatives of the United States to examine that utilization of any commodities, supplies, other property, or services provided under this Agreement at sites of their location or use; and to inspect or audit any records or other documentation in connection with the assistance wherever such records or documentation are located during the period in which the United States provides assistance to Turkey and for three years thereafter.

End Text.

¶7. (C) Action Request: Post requests the Department's guidance on a response to Turkey's position. In the meantime we will follow up with MFA to try to nail down the legal particulars of why articles III, IV, and V are not "in conformity with Turkish legislation." If the articles were the only obstacle to signing the agreement, we doubt it would have taken the Turks from September 2002 until March 2003 to reach their position. Our discussions with MFA and Turkish Customs have consistently shown that the Turks are eager to receive assistance and equipment, but are reluctant to agree to an overall framework for the program. Per Ref A, para 6, Post understands that the Department's position is that further equipment installation and "other significant EXBS program projects" cannot go forward absent the GOT's signing the proposed agreement. We have communicated this fact to the Turks. End Action Request.

PEARSON